IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

WEDNESDAY, THE 24TH OCTOBER 2007 / 2ND KARTHIKA 1929

WP(C).No. 31572 of 2007(H)

OS.138/2002 of MUNSIFF COURT,ATTINGAL
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PETITIONER:

K.NADARAJAN,
MANILAL MANDIRAM, NEAR GIRLS HIGH SCHOOL,
ATTINGAL.

BY ADV. SRI.S.SOMAN
SRI.R.SELVAKUMAR

RESPONDENTS:

SREEKANTAN NAIR, S/O. SREEDHARAN PILLAI,
VISAK BHAVAN, M.G.ROAD, ATTINGAL.

BY

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 24/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N. KRISHNAN, J.

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W.P.C. NO. 31572 OF 2007

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Dated this the 24th day of October, 2007.

J U D G M E N T

This writ petition is preferred against the order of the Munsiff, Attingal in E.P.78/04. The writ petitioner is said to be a goldsmith by profession. The Court below passed an order of arrest on the ground that he had conducted the marriage of his daughter in a good auditorium at Attingal and that he had given 25 sovereigns of gold for the marriage and therefore jumped to the conclusion of the means of the judgment debtor. The learned counsel for the writ petitioner has made available the deposition of the party which shows that he had only contributed 10 sovereigns of gold and he had denied the factum of celebrating the marriage in a luxurious manner. Under Section 51 of the CPC when arrest is ordered one is directly interfering with the civil liberty of a person. The Court has to satisfy itself that after the decree the judgment debtor has had the means to pay and he is

intentionally evading payment. Just because daughter's marriage is celebrated one cannot jump to the conclusion that he is a person who is capable of making payment especially in the back drop of some documentary evidence produced by him to show that he was unwell. Therefore, the order under challenge suffers from serious infirmity and therefore I set aside the same. I feel that an opportunity can be given to the decree holder to adduce positive evidence to prove the means of the judgment debtor and therefore the matter is remitted back to the Court below for fresh consideration and dispose it in accordance with law.

Since I am disposing of the matter in the admission stage I fix the date of appearance on 30.11.07 and on that day the Court shall give notice to the counsel appearing for the decree holder, fix a convenient date, permit both the parties to adduce evidence and dispose of the matter in accordance with law.

The writ petition is disposed of accordingly.

M.N. KRISHNAN, JUDGE.

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